

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION

BETTY TERRELL,

Plaintiff,

v.

WINN-DIXIE MONTGOMERY, INC.,
et al.,

Defendants.

CIVIL ACTION NO.
03-AR-3122-M

FILED
03 DEC 29 PM 2:44
U.S. DISTRICT COURT
N.D. OF ALABAMA

ENTERED
DEC 29 2003

MEMORANDUM OPINION

The above-entitled action was removed to this court from the Circuit Court of St. Clair County, Alabama, by defendant, Winn-Dixie Montgomery, Inc., alleging diversity jurisdiction, pursuant to 28 U.S.C. § 1332. The two individual defendants, Tim Parker and Steven O'Barr, have filed a motion to dismiss, challenging service of process. In order to recognize diversity jurisdiction, it would be necessary for this court to dismiss on the merits the action as against all non-diverse defendants. Otherwise, there would be no fraudulent joinder, as alleged by the removing defendant.

Agreeing with plaintiff's motion to remand and finding that a viable cause of action is stated under Alabama law as against one of more non-diverse defendants, the motion to remand will be granted by separate order. There is no ruling on the efficacy of the service of process.

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DONE this 29th day of December, 2003.

A handwritten signature in black ink, appearing to read "William M. Ackers, Jr.", written over a horizontal line.

WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE